

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 557 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAICHANDBHAI L. THAKKER

Versus

THAKORE NANALAL RAMJI DECEASED THROUGH HIS HEIRS AND LRS

Appearance:

MR SK JHAVERI for Petitioner

MR MK OZA for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/01/2003

ORAL JUDGEMENT

1. This Revision Application is filed against a judgment and order passed by the learned District Judge, Banaskantha at Palanpur on 18.11.1981 in Regular Civil Appeal No. 58/1978.

2. Present respondent - original plaintiff landlord filed a Regular Civil Suit No.79/1976 for the eviction of rented premises i.e. a part of the cabin at Deesa on the ground of arrears of rent and on the ground of reasonable bona fide requirement of the landlord. The facts suggest that before this suit, in a proceeding before the competent court, in Misc. Civil Application, the standard rent was fixed at Rs.16 + Rs.2 electricity charges per month. It was stated that the tenant present opponent was in arrears of rent from 1.3.74 to 31.8.1976 for 30 months. A notice accordingly was issued by Regd. A.D. to the tenant which was returned with the endorsement of refusal of the Postal Department and hence the present opponent filed the above said suit for eviction of the rented premises. The present opponent filed written submission at Exh.14 taking dispute that the standard rent was fixed by agreement and that was not the standard rent of the premises. He never had received the notice nor refused. That the landlord had no reasonable or bona fide requirement of the suit premises and that the tenant in the presence of two witnesses had already tendered the arrears of rent as mentioned in the plaint. The Trial Judge after recording of the evidence, came to the conclusion that the tenant was in arrears of rent for more than six months and that since notice was refused, the same to be considered is a valid service. The learned Trial Judge also came to the conclusion that the landlord - plaintiff had bona fide and reasonable requirement of the suit premises and vis-a-vis tenant, the landlord would suffer greater hardships and hence a decree of eviction and for the arrears of rent and mesne profit came to be passed against the present opponent original defendant by Civil Judge (SD), Deesa on 16.10.1978, which was challenged by the defendant in the above said Regular Civil Appeal No. 58/78.

3. Learned lower Appellate Judge after relying on decision of this Court in the case of MEMON ADAMHAI HAJI ISMAIL vs.BHAIYA RAMDAS BADIUDAS & OTHERS, reported in 1974 (15) GLR 655 came to the conclusion that since the tenant had denied in written statement and in his deposition about the receipt of the notice, the presumption of service was rebutted, and the plaintiff was duty bound to examine the Postman to prove the endorsement of refusal. Hence, the learned lower Appellate Judge came to the conclusion that since there was no valid notice, no case was made out under Sec.12(3)(a) of the Bombay Rent Act and the decree passed by the learned Trial Judge on this count was set aside.

The lower Appellate Judge also set aside the decree passed on the ground of bona fide requirement of the landlord and hence this Civil Revision Application.

4. The learned Advocate for the applicant Mr. S.K. Jhaveri, after relying on the decisions of the Supreme Court as well as of this Court, argued that there was no evidence to rebut the presumption of service of notice. On facts, both the courts below came to the conclusion that the contention of the tenant that he paid the arrears of rent in the presence of witnesses was not believable by both the courts below. It was argued that the lower Appellate Court erred in coming to the conclusion that mere denial of the tenant was sufficient to dislodge the presumption which had arisen under the General Clauses Act. In his submission, it was contended that there was nothing on record in the form of evidence except mere denial of the defendant - tenant that he had never refused the notice or that the notice was never tendered to him. He urged that the decree of the Trial Court is required to be confirmed on the ground of arrears of rent for more than six months under Section 12(3)(a) of the Bombay Rent Act and he also urged that the landlord plaintiff had made out the case about the bona fide requirement of rented premises for which he relied upon two decisions of the Hon'ble Apex Court.

5. As against that, learned Advocate Mr. M.K. Oza for the respondent, after relying on a decision of the Supreme Court in the case of PUWADA VENKATESWARA RAO vs. V. CHIDAMANA VENKATA RAMANA, reported in AIR 1976 SC 869 argued that when tenant denies the service of notice, the burden of proving such service rests on the plaintiff. Plaintiff has not examined the Postman in this case and in absence of service of a valid notice envisaged under Section 12 of the Bombay Rent Act, no decree of eviction could have been passed by the Trial Court against the tenant. It was also urged that the learned lower Appellate Judge rightly considered the circumstances and evidence on record and refused the decree on the ground of arrears of rent. It was also urged that there was no evidence at all suggesting the bona fide and reasonable need of the rented premises by the landlord. He also submitted that in view of the Amendment made in Section 115 of the Civil Procedure Code, this Revision Application would not be maintainable and the scope would be very limited.

6. On going through the record as well as the contentions raised as above, the case rests on whether decree can be passed against the tenant on the ground of arrears of rent. It is an admitted fact that after filing of the suit at intervals the tenant has paid the rent. Irrespective of that, the question is whether the ground of arrears of rent is available to the landlord in the facts and circumstances of the case. In this scope of matter, both the courts below examined the fact that the statutory notice under Section 12 which was issued, whether to be considered as served upon the tenant or not. The Notice is produced at Exh. 25 while the Regd.A.D. is produced at Exh. 26. In this regard, the position of law is settled. If the notice is sent to the addressee by Registered Post at correct address of the addressee and is returned with the postal endorsement of refusal, undoubtedly, presumption can be drawn that the registered envelope was tendered to the addressee but he refused to accept this. Needless it is to say, this presumption is rebuttable. The Supreme Court has laid down this law in the matter of HARCHARAN SINGH VS. SHIV RANI, reported in AIR 1981 SC 1284 and in the matter of JAGDISH SINGH vs. NATTHU SINGH, reported in AIR 1992 SC 1604. Not only that the Full Bench of this Court has also settled this law in the matter of MEMON ADAMBHAI HAJI ISMAIL vs. BHAIYA RAMDAS BADIUDAS & OTHERS, reported in 1974 (XV) GLR 655. Then, it is always a question of fact that such presumption is rebutted by evidence or not. Learned Trial Judge appreciated the evidence on record which was recorded in his presence and he had watched the witnesses deposing before him, came to the conclusion that, mere denial of the tenant of having received the envelope, would not be sufficient to rebut the presumption that the envelope was tendered to the addressee and he had refused to accept it. In these circumstances, knowledge of notice also is required to be imputed to the addressee. In this regard, a decision of the Supreme Court in the matter of ANIL KUMAR vs. NANAK CHANDRA VERMA, reported in AIR 1990 SC 1215, clearly lays down that it is wrong to hold that the bare statement of the tenant is sufficient to rebut the presumption of service. There must be some evidence on record on which the court must satisfy itself that the service was not effected. However, in the present case, ignoring proper appreciation of evidence by the learned Trial Judge, the learned lower Appellate Judge came to the conclusion that since the tenant had denied the service of notice, the presumption was rebutted, and in these circumstances, the landlord was duty bound to examine the Postman. The conclusion arrived at by the lower Appellate Judge is clearly erroneous and against the law as laid down by the

Apex Court in the matter of Anil Kumar vs. Nanak Chandra (supra) and also the law established by the decision of this Court.

7. The lower Appellate Judge neither assigned reasons for coming to this conclusion nor indicated that the appreciation of evidence by the Trial Court in this respect was erroneous or wrong and therefore in this view of the matter the conclusion of the Trial Court that Notice was served and that the tenant was in arrears of rent requires to be accepted and the lower Appellate Judge fell into error. The decision of the Apex Court in the matter of Puvada Venkateswara Rao (supra) relied upon by the learned Advocate for the respondent is not helpful to the respondent because it is not laid down in the said decision that mere denial of the tenant on oath would rebut the presumption of service.

8. So far as the next contention on the ground of bona fide requirement by the landlord is concerned, the learned Advocate for the petitioner cited two decisions of the Apex Court, namely, (i) in the matter of DATTATRAYA LAXMAN KAMBLE vs. ABDUL RASUL MOULALI KOTKUNE, reported in AIR 1999 SC 2226, wherein the Supreme Court ruled that reasonably and bona fide requirement means really genuine requirement from any reasonable standard. In the said decision it is also held that it is not necessary for the plaintiff to know the technical knowhow of the business which he might be starting at the demised premises, and (ii) in the matter of RAGHUNATH G. PANHALE vs. M/S CHAGANLAL SUNDARJI AND CO., reported in AIR 1999 SC 3864, wherein the Supreme Court ruled that a reasonable and bona fide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. The law will have to be applied according to the facts of the case. So far as this ground is concerned, the landlord has not sufficiently pleaded in his plaint that how the demised premises are bona fide and reasonably required by him nor such valid exposition comes from the evidence of the landlord. In the plaint as well as in his evidence in chief-examination, the landlord says that in part of the same cabin he runs the business and he changes his case to start the business of vegetable selling in cross-examination. On the face of it, even applying the ratio of the aforesaid two decisions of the Apex Court, one can hardly come to a decision that this is a case of reasonably and bona fide requirement of the premises by the landlord. The decision of the Trial Court in this respect is not in accordance with the evidence and therefore on this count

the lower Appellate Court has rightly concluded that the landlord was not entitled to decree of eviction on the ground of bona fide requirement of the premises.

9. So far as the ground of arrears of rent is concerned, the decree passed by the Trial Court on this count is required to be restored setting aside the conclusion of the lower Appellate Court. While so far as the ground of bona fide requirement of demised premises is concerned, the conclusion of the lower Appellate Court rejecting the decree passed by the Trial Court is required to be accepted.

10. The scope of the Revision under Section 29 of the Bombay Rent Act is much wider than the scope of Revision under Section 115 of the Civil Procedure Code. Even this Revision Application is considered within the scope of Section 115 of the Civil Procedure Code, it could hardly be said that the same is not maintainable. It clearly appears that illegality as well as material irregularity is committed by the lower Appellate Judge as above and the interference in the judgment impugned is warranted in the scope of this Revision.

11. In this view of the matter, this Revision Application is partly allowed to the extent that the decree of eviction on the ground of arrears of rent passed by the Trial Court including decree of arrears of mesne profits is restored. Rule is made absolute to the aforesaid extent only. No order as to costs.

(J.R. Vora, J.)

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